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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
RUHL, DENNIS WILLIAM	
ART UNIT	PAPER NUMBER
3689	
MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/087,039	CREED ET AL.	
	Examiner	Art Unit	
	Dennis Ruhl	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-83* is/are pending in the application.

4a) Of the above claim(s) *7-47,60-70 and 76-83* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,48-59,71-75* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Applicant's election without traverse in the reply filed on 11/14/07 and 3/26/08 is acknowledged. Claims 7-47,60-70,76-83 are withdrawn from further consideration pursuant as being drawn to a nonelected invention. Claims 1-6,48-59, and 71-75 have been examined.

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-3,6,48-56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For claims 48-56, these claims are directed to a system, which is an apparatus type of claim. Applicant is positively reciting method steps where certain acts are being performed. This is a mixing of both an apparatus type of claim with a process type of claim. 35 USC 101 does not allow for a claim to mix both apparatus and method as these claims recite. The language of "the aircraft service providers *supplying*...", "each of the customers *providing*..." in claim 48 is directed to method steps. This renders the claim indefinite. The examiner suggests that with respect to the system, do not claim method steps but recite that the system is configured to do certain things so that the language is functional and descriptive of the system but is not reciting an actual method step. Another example is claim 49 where it is claimed that the "database is providing…". Claims 50-56 contain language of the same nature.

For claims 1,2,3,6, In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a

particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. With respect to claims 1-3,6, there is no device claimed and no transformation of anything; consequently the claim language does not include the required tie or transformation and thus is directed to nonstatutory subject matter.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6,48-59,71-75, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 1,71, it is not clear as to what is meant by "in a manner that minimizes the occurrence of passenger-less flights". What does this define? What manner of matching or analyzing is in the scope of the claim and what kind of manner is not in the scope of the claim? What is considered to be minimizing and what is not? This renders the claims indefinite.

For claims 48-56, because applicant is claiming method steps in what is supposed to be an apparatus type of claim, it is not clear as to what the claim is directed to. Is this a method or an apparatus type of claim as the preamble indicates? Also

rendering the claim indefinite is the fact that one wishing to avoid infringement would not know if the method steps were required to infringe the claim or is just the recited structure is what is needed to infringe the claims. This would not be clear to one wishing to avoid infringement and renders the claim indefinite.

For claim 6, with respect to the claimed "responding to an aircraft service request", is this another service request separate from that of claim 1 or is this actually reciting the service request of claim 1? Are they the same or different? This is not clear.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2, are rejected under 35 U.S.C. 102(b) as being anticipated by "Tired of commercial flights?" (1995).

For claim 1, the article discloses what is known as a fractional aircraft program where customer can purchase a share in an aircraft and the share entitles them to a certain number of flight hours that they can use aircraft that are in the fractional aircraft program. The establishing a pool of service providers is the establishing of the aircraft and the crew for the multiple planes that are part of a fractional aircraft program and that ultimately end up providing the service to the customer. The obtaining of an aircraft service request is the customer using their flight time and requesting aircraft for use. To

obtain the use of an aircraft the customer must submit a request so that the aircraft can be readied. Page 2 of the article discloses that a computerized database stores "customer requirements and airplane preferences". This satisfies the set of customer specific parameters, as well as being satisfied by the fact that the date and time of travel is specified by the customer and would be part of requesting the use of an aircraft. An aircraft is selected from the pool of providers as claimed and matched to the request as claimed. This would be especially true when the customer has specified an "aircraft preference" but happens when the customer specifies the date on which they desire to travel.

For claim 2, it is considered inherent that at some point confirmation will be received as to whether or not an aircraft is available as claimed. The service carrier is the disclosed administrative staff that manages and handles the program and its operation. Even if you just show up and your plane is there and you get on, that is in and of itself confirmation that the plane is available to you because you just got onto the plane and they are ready to take you to your destination.

8. Claims 48-59,71,72,74,75, are rejected under 35 U.S.C. 102(b) as being anticipated by Pugliese, III et al. (20010016825).

For claims 48-56, Pugliese discloses a system for taking reservations for flights. Disclosed is a means for communicating with service providers (any of the communication mediums used to communicate data for a reservation) and also discloses a means to communicate with customers (the communication medium to send

back results to the customer). The claim 48 is very broad in that it is just claiming two "means to communicate" that can be satisfied by any two modems or any two network lines or any two computers. With respect to claims 49-54, the claims are reciting non-functional descriptive material. The information that applicant intends to provide via the database is not further defining any structure to the claimed system. The content of the databases is not even positively claimed and is non-functional descriptive material. For claims 55,56, the means for communicating is a communication medium as has been addressed. The fact that it is intended to communicate with a satellite does not define anything more than the means to communicate itself.

For claims 57, applicant has claimed a means for communicating with a travel card. The examiner notes that the card itself is not claimed, only the means to communicate with the card. The ATM of Pugliese is used to communicate with a travel card (paragraph 78). This satisfies what is claimed.

For claims 58,59, Pugliese discloses that the card can be used for hotels and car rentals, see paragraphs 90 and 91.

For claims 71,72,74,75, Pugliese discloses that reservations are taken for flights via computers (communication links). A database stores data relating to flights (see paragraphs 79 and 80). The data relevant to the plurality of aircraft is the data regarding what flights are available, etc.. The receiving of data relevant to service requests is the information about a desired flight that a customer wants to inquire about. The saving of the data is disclosed in para. 79. Passengers are matched to flights as

claimed to the extent that this claim language is understood by the examiner (see 112,2nd).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 3,6, are rejected under 35 U.S.C. 103(a) as being unpatentable over "Tired of commercial flights?" (1995).

For claim 3, not disclosed is that the requests are received via a web page. One of ordinary skill in the art is very aware of the fact that the Internet is in very widespread use and is a communication medium that is used to communicate all kinds of information. The examiner takes "official notice" that it is old and well known in the art to use a web page to affect a reservation for a car or a plane or a hotel room, etc.. It

would have been obvious to receive service requests via the Internet from a web page as this is just the use of the Internet to conduct business and would have been very obvious to one of ordinary skill in the art. Simply using a web page to receive the data that is involved in the fractional aircraft program is just using the Internet to do what the reference discloses is done via an 800 phone number (page 2). One of ordinary skill in the art would find it obvious to use a web page and the Internet to receive service requests.

For claim 6, not disclosed is the responding to the service request in a specified amount of time. It is well known in business that some things come with a time guarantee. Some food establishments have a policy that you will be served within a predetermined amount of time or your food will be free. This is known in the art. Having a time guarantee is just a way to attract more business and provide customer service to your customers. This is already known in the art and to provide such to the prior art is obvious to one of ordinary skill in the art.

12. Claims 4,5, are rejected under 35 U.S.C. 103(a) as being unpatentable over "Tired of commercial flights?" (1995) in view of Hohle et al. (6101477).

For claims 4,5,57 (alternate interpretation addressing the card) not disclosed is that the customer has a travel card that stores the pre-purchased amount of aircraft service. In the fractional aircraft program, the customer pays up front for use of aircraft so obviously the data regarding how many hours they are entitled to would be stored in some manner somewhere. Hohle discloses a travel card that stores data relating to

travel and specifically discloses information such as payment data to affect transactions, see column 5. Other information stored is information that can streamlining travel by storing customer preferences, electronic tickets, etc., see column 5, lines 38-42. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a travel card as is disclosed by Hohle with a fractional aircraft program such as that disclosed by the article "Tired of commercial flights?" so that the number of hours the customer is entitled to can be stored, as well as how much time they have left. This is also very similar to any stored value type of card that operates like a debit card. The examiner takes "official notice of the fact that for many years a subway ticket in Washington DC operated in the same manner in that it stores the amount of dollars you have stored on the card and this directly related to how much subway service you can use. Using a card to store the claimed information is considered to be obvious. The language in claim 5 about what the card provides is noted but is directed to non-functional descriptive material that does not serve as a limitation. This defines nothing further to the structure of the card itself and nothing further as far as steps go.

13. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese, III et al. (20010016825).

For claim 73, not disclosed is the use of a satellite dish. A satellite dish is a very well known communication device that has been in widespread use for many years. One of ordinary skill in the art would have found it obvious to use a satellite as this is a

known type of communication device that one of ordinary skill in the art could choose from the known available types of communication devices.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689